COURT NO.3

Criminal misc. petition no. 360 of 2002

Dr. Rajpal Saini & others ….Applicants.

Vs.

State of Uttaranchal & others. …Opposite parties.

Hon'ble Irshad Hussain, J.

This is a petition under section 482 of the Code of Criminal Procedure (hereinafter for short 'Code') for setting aside the impugned order passed by the First Civil Judge, Hardwar on 27.08.1998, whereby the application preferred on behalf of the State/prosecution under section 321 of the Code was rejected and another order dated 24.09.2002 passed by the Additional Sessions Judge, Hardwar dismissing the revision preferred against the said order on behalf of the State.

It appears that the learned Magistrate refused to accord permission for withdrawal of the prosecution on the move of the Government/prosecution on the plea that the withdrawal of the prosecution will not be in the interest of the community and that the decision to withdraw the prosecution has not been bonafidely taken considering the facts and circumstances of the case. The learned Magistrate had also adverted to a reported decision of the Supreme Court in Shiv Nandan Paswan Vs. State of Bihar, 1987 (1) SCC, 288. From the perusal of the facts of the case it is evident that the incident took place when a procession on the eve of Moharram was to take place and the complainant who was then posted as S.D.M. was deputed to look after the law and order position there at the time of the procession. The accused at that time is alleged to have made

uncomplimentary remarks against the S.D.M. and there was allegations that attempt was made to assault the said public servant. The Government had in the interest of community taken a decision to withdraw the prosecution because the matter relates to the two communities and in the larger interest of the social harmony, the decision appears to have been taken by the Government. If on the complaint of the public servant, the accused continued to be prosecuted, it may have created tension among the communities and the learned Magistrate while disposing of the petition has not taken into account all these factors and went on to prima facie come to the conclusion that the decision taken by the Government was not bonafide.

The learned Additional Sessions Judge has also not considered the case in hand keeping in view the attending circumstances and went away with the observations as made by the learned Magistrate. Considering the totality of circumstances, matter needs to be decided afresh in the light of the observations made above after hearing the parties on the matter.

In view of above the impugned orders are set aside. The application under section 321 of the Code for withdrawal of the prosecution shall be heard and decided afresh after hearing the parties by the learned Magistrate. The observations made shall, however, be not taken as final guiding to decide the matter on merit. With this observation, the petition is disposed of finally.

(Irshad Hussain, J.)

23.11.02./B.